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No. OFFICE OF THE CLERK

In The Supreme Court of the United States

OCTOBER TERM 1997

PEARL B. MATTHEWS,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. When an attorney has been designated by Farmers Home Administration (FmHA) as a closing agent for a farm loan from FmHA, pursuant to 7 C.F.R. 1807.1, 1807.2, and 1890t.2 (1978), do the attorney's responsibilities to FmHA permit a court to assume as a matter of law that the attorney represents the interests of a co-obligor of the applicant for the loan, or may the co-obligor show that the attorney was acting as an agent of FmHA in connection with the closing?

2. Where a defendant to a foreclosure action pleads as an affirmative defense that her signature to the loan documents was secured by undue influence, may a federal court applying North Carolina law grant judgment on the pleadings against the defendant, for failure to allege that the person allegedly exerting undue influence misused his position of trust in order to gain personally from the transaction which resulted from his undue influence?

3. Does Farmers Home Administration assume a duty, whether fiduciary, quasi-fiduciary, or other in nature, to act in a person's best interest, and can it be found liable for violation of that duty, if it instructs that person to sign loan documents, when the person has no knowledge of the consequences?

PARTIES TO THE PROCEEDINGS BELOW AND DISCLOSURE UNDER SUP.CT.R. 29.6

Pearl B. Matthews, Petitioner herein, was defendant in the trial court and appellant in the Court of Appeals. The United States of America, Respondent herein, was plaintiff in the trial court and appellee in the Court of Appeals. No party to this proceeding is a corporation, and no corporation was a party to the proceedings below.

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I. In holding that the attorney who handled the closing of an FmHA loan was acting as agent for the borrower and not as agent for FmHA, the courts below have decided an important federal question in a way which conflicts with at least one state court of last resort.

A. The courts below disregarded FmHA regulations and All American Realty, Inc. v. Sweet, 107 Idaho 229, 687 P.2d 1356 (Idaho 1984), in characterizing the attorney who handled the loan closing as Ms. Matthews' attorney.

B. The courts below ruled directly contrary to controlling North Carolina law in granting judgment on the pleadings on Petitioner's undue influence claim for failure to allege that Mr. Woodall or FmHA gained any advantage from the exercise of undue influence.

II. In treating the relationship between the Matthews and FmHA as simply a debtor-creditor relationship, without fiduciary duty on FmHA's part, and disregarding both the relationship between FmHA and its borrowers and FmHA's conduct toward the Matthews, the courts below decided an important federal question in a manner which conflicts with at least one state court of last resort.

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FEDERAL CASES

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54 FR 12211 (3/24/89), *et seq.*

56 FR 67470 (12/31/91), *et seq.*

STATE STATUTES, REGULATIONS, etc.

North Carolina Pattern Jury Instructions-Civil 505.30 (May 1982)

OTHER AUTHORITIES

The Restatement(2d), Torts, Section 323

CITATIONS OF REPORTS OF OPINIONS AND ORDERS ENTERED BY COURTS BELOW

The opinion and order of the District Court are unpublished. The decision of the Court of Appeals was also unpublished, but it is reported at 1997 U.S.App. LEXIS 32248.

BASIS FOR JURISDICTION IN THIS COURT

The judgment sought to be reviewed was entered on November 18, 1997. Petitioner did not petition for rehearing. This Court has jurisdiction to review the judgment of the Court of Appeals on a writ of certiorari pursuant to 28 U.S.C. 1254.1.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1997

PEARL B. MATTHEWS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE AND MATERIAL PROCEEDINGS

This Petition arises from a farm foreclosure action involving a loan obtained by Petitioner's late husband from the Farmers Home Administration (hereinafter "FmHA").

On February 23, 1995, Respondent United States of America filed this action in the district court seeking a money judgment against Petitioner and a judgment of foreclosure of the deed of trust which Respondent holds against all of Petitioner's real property. The District Court had original jurisdiction over the subject matter of the action pursuant to 28 U.S.C. Section 1345, as an

action commenced by the United States.

Petitioner filed a verified Answer in a timely manner, seeking to rescind the note and deed of trust because of the lack of mental capacity of her late husband when he signed the note and deed of trust. (A-47 *et seq.*) Ms. Matthews also pleaded affirmative defenses of violation of FmHA regulations in failing to determine Mr. Matthews' competency, and undue influence which was exerted on Petitioner by agents of Respondent to obtain her signatures on those documents. Plaintiff also sought recission of the note and deed of trust, and recoupment of the amounts paid thereunder, because of FmHA's breach of fiduciary duty in executing the note and deed of trust without ascertaining the effect of refinancing Mr. Matthews' debts given his grave illness.

Prior to any discovery, the government moved for judgment on the pleadings under Fed.R.Civ.P. 12(c). Said motion was granted by the District Court by Order entered July 28, 1995. (A-1) The final judgment of the District Court was entered on August 9, 1995. (A-10) Petitioner took her appeal from said judgment and filed her motion for stay with the District court. Said motion was denied and Petitioner filed a motion for a stay with the Court of Appeals. The Court of Appeals denied the motion for a stay and entered judgment affirming the judgment of the District Court. The judgment of the Court of Appeals was entered on November 18, 1997. (A-5)

Factual background

Petitioner and her late husband, William Preston Matthews, owned and lived on a small farm in Lillington, North Carolina. Mr. Matthews applied for an Economic Emergency loan from FmHA on September 17, 1978. He applied for said loan to refinance various obligations which had been incurred in the operation of his and Petitioner's farm. At the time of the application for said loan, Mr. Matthews was under a doctor's care for chronic renal failure and was in extremely poor health. However, Mr. Matthews' loan application was approved by FmHA on November 30, 1978. (A-47, *et seq.*)

On December 1, 1978 Mr. Matthews had a major motor seizure at this home immediately after dialysis and was rushed to Duke Hospital in Durham, North Carolina. Upon Mr. Matthews' admission to the hospital, the attending physician noted that Mr. Matthews displayed symptoms of dialysis dementia, a progressive illness, suffered by long-term dialysis patients, the symptoms of which include disorders of memory, lapses in concentration, alteration of personality and psychosis. Id.

On December 21, 1978, while Mr. Matthews was still in the hospital, an FmHA employee from the Harnett County office and attorney Marshall Woodall drove from Harnett County, North Carolina, to Duke Hospital, to have Mr. Matthews execute the papers necessary to close the loan from FmHA. Marshall

Woodall was the "designated attorney" for the loan closing. Id. (The role of a "designated attorney" is discussed below.)

Mr. Matthews had undergone surgery on the day that the FmHA county supervisor and Mr. Woodall arrived. However, he met with the FmHA county supervisor and attorney Woodall in his hospital room after said surgical procedure. While in his hospital bed, Mr. Matthews signed the promissory note for $88,000.00, as well as a deed of trust to all of the real property owned by Mr. Matthews and Petitioner, as security for the loan. Id.

At the time Mr. Matthews signed the note and deed of trust, Petitioner was at her home and was not aware of the signing of the documents for the loan or even of the fact that Mr. Matthews had applied for a loan. She was under a great deal of stress because of the dire illness of her husband. Id.

On December 22, 1978 attorney Woodall brought the note and deed of trust to Petitioner and instructed her to sign them. Woodall made no attempt to explain the aforementioned note and deed of trust to Petitioner. He told her only that her husband had signed them and that her signature was also required. Attorney Woodall was known to Ms. Matthews because he had performed legal services for Petitioner and Mr. Matthews in the past. Petitioner, being uninformed as to her husband's business affairs and her husband's mental status

at the time of his signing of the documents, and trusting Mr. Woodall because of his past work for the Matthews, signed the note and deed of trust on Mr. Woodall's instructions. Id.

Mr. Matthews died of chronic renal failure less than four months later, on April 17, 1979. Thereafter, Petitioner made payments on the FmHA loan for over a decade before she defaulted. The government accelerated the loan on October 30, 1991. Id.

Petitioner alleged on information and beflief that none of the obligations which Mr. Matthews sought to refinance were in default at the time Mr. Matthews applied for the Economic Emergency Loan. She also alleged that many or all of the loans which were refinanced by the loan from FmHA were insured loans which would have been paid by credit life insurance upon the death of her husband, and that had the Matthews not refinanced the insured debt, the debt would have been declared satisfied in full upon Mr. Matthews' death. Id.

One of the insured obligations was a note in the amount of $11,900.00 to the Federal Land Bank with a securing deed of trust. For some time before Mr. Matthews' death, the regular annual payments on that loan had been made from a credit disability policy issued for said loan. Said credit disability policy was cancelled at the time the Federal Land Bank loan was refinanced. Id.

The note and deed of trust to FmHA left defendant with a significantly

greater debt load than she would have had, had the original debts not been refinanced. Id.

The Opinion of the District Court

The district court said that the issue of Mr. Matthews' competence was irrelevant because Petitioner had become the owner of the property encumbered by the loan, and in any case, she had signed the promissory note and deed of trust herself in 1978. "At his death, the debt, the land, and the value of the loan became the defendant's responsibility solely." (A-2,3) When she defaulted, the government was entitled to accelerate the loan and foreclose on the property.

The court found no merit in Ms. Matthews' affirmative defenses of undue influence and breach of fiduciary duty by FmHA. The court stated that FmHA was not in a fiduciary relationship with Ms. Matthews, and breached no duty to her. The court also asserted that the facts did not indicate that Ms. Matthews was unduly influenced into signing the promissory note and deed of trust.

> The facts, viewed in the light most favorable to the defendant, indicate that she was in her home with her attorney at the time she executed the documents. While the Court recognizes that she was under emotional and financial stress due to her husband's medical condition, she has not shown that her attorney unduly influenced her decision, or took advantage of her emotional

state of mind. (A-3)

The court also said that to establish undue influence, Ms. Matthews would have to show that the FmHA or her attorney misused their position of trust in order to gain personally from the transaction she was influenced into making, and that Ms. Matthews had not presented a forecast of such evidence in this case. Id.

The Opinion of the Court of Appeals

The Fourth Circuit decided the appeal on briefs and affirmed in a per curiam opinion, "finding that Matthews can prove no facts sufficient to support her affirmative defenses." (A-6)

The court first addressed Ms. Matthews claim that attorney Woodall acted as an agent for FmHA in having Mr. Matthews execute the loan papers in the hospital and instructing her to sign the note and deed of trust without explaining them to her. The Court of Appeals said that the district court properly found that Mr. Woodall was not acting as an agent for FmHA because "Matthews' own pleadings belie her claim--she stated that Woodall acted as her agent in the loan transaction." In fact, Plaintiff's Answer plainly states: "Upon information and belief, at all times relevant to this action, Woodall was acting as agent for FmHA."

The court further found Petitioner's forecast of the evidence of undue

influence by Mr. Woodall over her insufficient "because she does not allege that Woodall abused his position of trust to gain from the transaction." (A-8)

With regard to Ms. Matthews' claim that FHA breached a fiduciary duty owed to her, the court said, without discussion, that Ms. Matthews' allegations that FHA is a lender of last resort and that it customarily enters a fiduciary relationship with its borrowers were insufficient to establish the existence of a fiduciary relationship, and without a fiduciary relationship, there could not be a breach of duty.

ARGUMENT

I.

IN HOLDING THAT THE ATTORNEY WHO HANDLED THE CLOSING OF AN FMHA LOAN WAS ACTING AS AGENT FOR THE BORROWER AND NOT AS AGENT FOR FMHA, THE COURTS BELOW HAVE DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY WHICH CONFLICTS WITH AT LEAST ONE STATE COURT OF LAST RESORT.

A. The courts below disregarded FmHA regulations and All American Realty, Inc. v. Sweet, 107 Idaho 229, 687 P.2d 1356 (Idaho 1984), in characterizing the attorney who handled the loan closing as Ms. Matthews' attorney.

The courts below rejected Ms. Matthews' defense of undue influence in large part because they considered Mr. Woodall, the attorney who handled the loan closing, to be Ms. Matthews' attorney. They did not consider the significance of the regulations of the Department of Agriculture concerning the role of a "designated attorney" in FmHA loan closings. While it is true that the usual practice of FmHA at the time was to have the borrower select the closing attorney from its list of approved local attorneys, it does not necessarily follow that Woodall was representing Mr. or Mrs. Matthews when he instructed Ms. Matthews to sign the note and deed of trust in question. As shown below, an attorney participating in an FmHA loan closing participates first and foremost as "closing agent" for the benefit of FmHA. As noted below, the Supreme Court of Idaho has held that the "designated attorney" in an FmHA loan closing may be more accountable to FmHA than to the original clients, whose loan he is trying to close.

The question of where the duty of an FmHA "designated attorney" lies is an important Federal question. Although the agency of the U.S. government known as the Farmers Home Administration no longer exists under that name, its successor agency, the Farm Service Agency (FSA) continues to make direct loans to thousands of farmers each year. These farmers are by and large beginning farmers and are all persons who cannot

obtain credit anywhere else. FSA is governed by the same regulations as governed FmHA. With some minor changes, as are discussed below, attorneys who close loans for FSA continue to represent the agency and not the borrower. This fact is not known to most borrowers and can often be to the borrowers' detriment when obtaining a loan from FSA.

Furthermore, if there is evidence tending to show that a principal-agent relationship exists, then the question of whether such a relationship exists is one of fact to be determined by a jury. Bradson Mercantile, Inc. v. Industrial Contracting Corporation, 883 F.Supp. 37 (1995). Given the allegations of Ms. Matthews' Answer and the FmHA regulations, the issue of whether there was a principal-agent relationship between Ms. Matthews and Mr. Woodall should not have been resolved against Ms. Matthews through judgment on the pleadings.

Under FmHA regulations in effect at the time of the Matthews loan in 1978, the attorneys involved in loan closings for FmHA loans were responsible to and to some extent financially dependent upon FmHA.

"Designated attorney" was an FmHA term defined in regulations applicable at all times relevant to this case, as an attorney who had qualified to serve as closing agent or "Escrow Agent" for FmHA loans, and who therefore had certain duties toward FmHA. Under FmHA regulations, the role of closing agent

could be performed by either a designated attorney or a designated title company. Under these regulations, although the borrower officially "hired" the attorney or title company, he had to hire one who had previously been "designated" by FmHA. See 7 C.F.R. 1890t.2 (A-39), 7 C.F.R. 1807.1 (A-13), and 7 C.F.R. 1807.2 (A-19). The designated closing agent was then responsible for advising the FmHA County Supervisor and ensuring that FmHA "obtain[ed] a valid mortgage lien on the property of the priority required by the Farmers Home Administration." 7 C.F.R. 1807.2(f)(A-30)

The regulations were re-numbered and amended in certain respects in 1991. See 56 FR 67470 (12/31/91). Insofar as the new regulations are relevant to this proceeding, they are codified at 7 C.F.R. Part 1927, Subpart B - Real Estate Title Clearance and Loan Closing. The major change of relevance to this Petition is that instead of FmHA or its successor agency maintaining a list of "designated attorneys," any attorney can become an "approved" attorney for a particular case by certifying to the Agency that he or she meets the requirements (basically, "good standing," sufficient liability insurance, and fidelity bonding). The new regulations did not change the role of the attorney as "closing agent" or "settlement agent," "commissioned" [see 54 FR 12212] by FmHA to do title work, etc. One purpose of the change was to increase the number of attorneys handling loan closings, and thereby cause attorney

fees to fall. 56 FR 67470.

In All American Realty, Inc. v. Sweet, 107 Idaho 229, 687 P.2d 1356 (Idaho 1984), the Supreme Court of Idaho considered "the duty of an attorney, acting as closing agent pursuant to Farm [sic] Home Administration regulations in a real estate transaction, to the real estate broker, for failure of the attorney to pay the broker its commission as required by the escrow instructions." The court said, "As the designated closing agent under FmHA regulations, Sweet was acting in the capacity of an escrow holder." Although the main opinion is not clear, a concurring opinion states that the attorney was retained by the buyer and seller before being appointed "designated attorney" by FmHA. At the closing, the buyer and seller told the "designated attorney" that no broker's commission was due and instructed their attorney to pay the seller. The broker sued the attorney. The court reversed the grant of summary judgment for the attorney, in effect holding that the duties of the attorney as "designated attorney" could be contrary to the interests and instructions of his own clients.

A concurring justice, citing 7 C.F.R. Section 1807.1(e) and Section 1890t.2, stated: "FmHA assumes the right to dictate to people whose transactions involve its monies that they employe a designated FmHA closing agent." The justice pointed out that the designated attorney was acting as closing agent at

the direction of FmHA, not performing services for the borrower or seller, although in that case he had represented the buyer earlier.

For other cases noting, but not resolving, the uncertain status of an FmHA "designated attorney," see U.S. v. Bailey, 734 F.2d 296 (7th Cir. 1984); Provencal v. Michel Construction, Inc., 505 F.Supp. 770 (W.D.Mich. 1980).

Thus, where an attorney is serving as a designated attorney to protect the interests of FmHA, no assumption is justified that the attorney "represents" the interests of someone whose signature is required for the loan to close. Although it is true that a bare allegation of agency without any supporting facts is not sufficient to raise an inference of agency in order to avoid judgment on the pleadings, Ms. Matthews has pled numerous facts from which a reasonable person could infer that Woodall was acting as agent for FmHA, not for her.

Ms. Matthews has pled that Woodall traveled to Duke Hospital in Durham with the FmHA County Supervisor and had Mr. Matthews sign the note and deed of trust while he was in an obvious state of dementia. Ms. Matthews has pled that Woodall made no attempt to explain the documents to her when he directed her to sign them. Assuming Woodall was acting properly, from these facts a reasonable person can infer that Woodall was acting on behalf of the lender and not the borrower in this instance. If Ms.

Matthews is given the benefit of this inference as she should be, then she should be given the opportunity to gather additional facts regarding the relationship of Woodall to FmHA through discovery and to prove to a jury at trial that a principal-agent relationship existed.

B. The courts below ruled directly contrary to controlling North Carolina law in granting judgment on the pleadings on Petitioner's undue influence claim for failure to allege that Mr. Woodall or FmHA gained any advantage from the exercise of undue influence.

Ms. Matthews has pled facts sufficient to support an inference that the government exercised undue influence over her in her execution of the note and deed of trust.

The courts below stated that, in order to show undue influence, it must be proved that the party exercising such influence does so to gain his own advantage. North Carolina law, which governs the note and deed of trust at issue, does not impose such an across-the-board requirement. The Supreme Court of North Carolina has stated that "[t]o constitute such undue influence, it is not necessary that there should exist moral turpitude . . ." In re Will of Turnage, 208 N.C. 130, 132, 179 S.E. 332, 333 (N.C. 1935). The North

Carolina Pattern Jury Instructions for undue influence state: "Such undue influence does not necessarily involve moral turpitude or even a bad or improper motive." N.C.P.I.-Civil 505.30 (May 1982). Whereas the benefit to be gained by the party exercising undue influence may be evidence as to its existence, the absence of such gain in no way validates the assent of the party being influenced. In order to show undue influence,

> Something must operate under the mind of a person allegedly unduly influenced which had a controlling effect sufficient to destroy the person's free agency and to render the instrument not properly an expression of the person's wishes but rather the expression of the wishes of another or others.

Hardee v. Hardee, 309 N.C. 753, 756, 309 S.E.2d 243, 245 (1983).

In considering a motion for judgment on the pleadings, all facts and inferences which could be drawn from the pleadings must be read in the light most favorable to the non-moving party. Jablowski v. Pan American World Airways, 863 F.2d 289, 290 (3rd Cir. 1988). Ms. Matthews has pled that she was in a very weakened mental state because of the grave illness of her husband and that she signed the note and deed of trust in question because she was instructed to do so by Woodall, whom she trusted because of legal services he had provided to her

and Mr. Matthews in the past. The pleading of these facts is sufficient to raise the issue of undue influence. Further, a reasonable inference is that there was advantage to Mr. Woodall, in that he would only be paid if the loan closing was completed.

Therefore, it was error for the courts below grant the government judgment on the pleadings on Petitioner's claim that Mr. Woodall, the designated loan closing agent on the FmHA loan, obtained her signatures on the promissory note and deed of trust through undue influence, while acting as an agent for FmHA.

II.

IN TREATING THE RELATIONSHIP BETWEEN THE MATTHEWS AND FMHA AS SIMPLY A DEBTOR-CREDITOR RELATIONSHIP, WITHOUT FIDUCIARY DUTY ON FMHA'S PART, AND DISREGARDING BOTH THE RELATIONSHIP BETWEEN FMHA AND ITS BORROWERS AND FMHA'S CONDUCT TOWARD THE MATTHEWS, THE COURTS BELOW DECIDED AN IMPORTANT FEDERAL QUESTION IN A MANNER WHICH CONFLICTS WITH AT LEAST ONE STATE COURT OF LAST RESORT.

Decisions of this Court and state courts provide a basis for FmHA having at least a quasi-fiduciary duty toward its borrowers in some circumstances. The

facts pleaded by Petitioner in her Answer establish a colorable claim that such circumstances exist in her case, and entitle her to an opportunity to try to develop her claim.

Even commercial lenders can have duties toward their borrowers in appropriate circumstances. In Deist v. Wachholz, 208 Mont. 207, 678 P.2d 188 (Mont. 1984), the Supreme Court of Montana held that a bank officer was bound to insure that a bank customer was not "insufficiently informed of some factor which could affect [her] judgment," where the bank acted as financial advisor and the customer relied upon their counsel. To similar effect, in Hutson v. Wenatchee Federal Savings and Loan Association, 22 Wash.App. 91, 588 P.2d 1192 (Wash.App. 1978), while recognizing that the lender is not a fiduciary in the common sense of the term, the court held that a savings and loan association may be a quasi-fiduciary in its relationship with its customers by their reliance upon its superior knowledge and expertise and may have a duty to disclose and define information.

Under North Carolina law, it is not necessary to show a legal relationship to establish a fiduciary relationship. A de facto fiduciary relationship can be shown where "there is confidence reposed on one side, and the resulting superiority of influence on the other." Frizzell Construction Company, Inc. v. First Citizens Bank & Trust Company, 759 F.Supp. 286, 290-291 (E.D.N.C. 1991).

This Court has already recognized that FmHA is different than a commercial lender. In United States v. Kimbell Foods, Inc., 440 U.S. 715, 735 n.34, 99 S.Ct. 1448, 59 L.Ed.2d 711 (1979), this Court noted "the evident distinction between lending programs for needy farmers and businesses and statutes created to guarantee receipt of debts due the United States." Id., 440 U.S. at 735 n.34. The Court said:

> The overriding purpose of the tax lien statute obviously is to ensure prompt revenue collection. The same cannot be said of the [Small Business Administration] and [Farmers Home Administration] lending programs. They are a form of social welfare legislation, primarily designed to assist farmers and businesses that cannot obtain funds from private lenders on reasonable terms.

Id., 440 U.S. at 734-735. FmHA functions as a lender of last resort for low equity and beginning farmers, and for farmers who experienced losses from natural disasters.

Furthermore, FmHA has significant power over its borrowers, not only because FmHA borrowers have nowhere else to turn, but also because of the special status accorded FmHA supervisors by the regulations and the loan agreements. FmHA supervisors typically have extensive knowledge of the borrower's situation and

routinely advise farmers on all manner of issues related to their farms.

> FmHA is a . . . statutory scheme where a relationship of privity, trust and reliance is created between the borrowers and the agency.

Park v. United States, 517 F.Supp. 970, 979 (D.Oregon 1981).

In this case, FmHA obviously knew that Mr. Matthews was gravely ill, unable to run his farm, and, if not mentally incompetent, certainly of dubious competence. It went ahead and had Mr. Matthews sign papers which were manifestly not in his best interest. Although FmHA knew that Petitioner had not signed the loan application and had not been part of any discussion with FmHA personnel concerning the loan, and there was no basis for assuming that she understood what was happening, FmHA then instructed Petitioner to sign the promissory note and deed of trust. FmHA did this without attempting to discuss with her either Mr. Matthews' condition or the implications of signing the papers, although she was obviously the one who was going to have to deal with the consequences. In so doing, FmHA violated its own regulations in a way that worked to the detriment of Petitioner.

At the time that the FmHA employee and Mr. Woodall had Mr. Matthews sign the promissory note and deed of trust, FmHA regulations stated in part: "Persons having a disability of minority or mental

incompetency ... are not to execute the promissory note." 7 C.F.R. 1807.2(f)(8)(A-36). The regulations also stressed that care should be taken that borrowers understand what is involved. "The applicant shqould not be rushed into a decision but should be given time to make all necessary basic decisions." 7 C.F.R. 1801.4. The FmHA County Supervisor was required to determine whether there had been a significant change in the borrower's income or debts between the time of the loan application and the loan closing. 7 C.F.R. 1890t.2(b)(i).

The above-cited regulations provide the standard of care and parameters of the duties imposed on FmHA by Congress through the statutory framework. FmHA fell below that standard of care. If FmHA had obeyed its own regulations, the present problem could have been avoided. Under these circumstances, FmHA assumed at least a quasi-fiduciary responsibility toward Petitioner, and breached that duty.

Furthermore, where FmHA in effect chased Mrs. Matthews down - going to her home and instructing her to sign the documents, knowing that she had not been privy to either the application for the loan or any discussions with FmHA employees or the FmHA-designated attorney, FmHA assumed a duty toward Mrs. Matthews of the type recognized by this Court in Indian Towing v. United States, 350 U.S. 61 (1955). In Indian Towing, the Court held that the Coast Guard could be held liable for negligence in

operation of a lighthouse. The Court stated: 'One who undertakes to warn the public of danger and thereby induces reliance must perform his "good Samaritan" task in a careful manner.' This duty is expressed in Section 323 The Restatement (2d), Torts provides:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable acre to perform his undertaking, if
> (a) his failure to exercise such care increases the risk of such harm, or
> (b) the harm is suffered because of the other's reliance upon the undertaking.

The undertaking to perform the activity establishes the duty on the part of the government. When the undertaking does harm, as it did here, it is the government, and not the victim, that should bear the burden. This "good Samaritan" basis of liability of government agencies has been applied to holding FmHA liable to its borrowers. See, e.g., Neal v. Bergland, 646 F.2d 1178 (6th Cir. 1981), aff'd sub nom. Block v. Neal, 103 S.Ct. 1089 (1983).

In light of the above law, and the facts alleged in Petitioner's Answer, it cannot be said "beyond doubt" that she "can prove no set of facts in support of [her] claim which would entitle [her] to relief," Conley v. Gibson, 355 U.S. 41, 45-46 (1957), and the government was not entitled to judgment on the pleadings.

CONCLUSION

The district court erred when it granted the motion of the United States for judgment on the pleadings. Reading the factual allegations of Ms. Matthews' Answer in the light most favorable to Ms. Matthews, and drawing all inferences which can reasonably be drawn in favor of Ms. Matthews, the grant of the government's motion for judgment on the pleadings should be denied and Ms. Matthews should be allowed to proceed to discovery.

For the reasons stated above, Ms. Matthews requests that the Court grant her Petition.

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